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seems the *Cleminson* case has been overruled and the law of *Farris v. People*, *supra*, reestablished.

DAMAGES—BREACH OF CONTRACT TO CARRY DEAD BODY. Plaintiff's son was killed in the State of Washington. She contracted with the defendant railway to ship the remains to her home in Texas within five days. There was delay in forwarding the body and plaintiff brought suit to recover damages for physical pain and mental suffering alleged to have been sustained by her. *Held*, mental suffering is a proper element of damages for breach of such contract. *Missouri K. & T. Ry. Co. of Texas v. Linton* (Texas 1911) 141 S. W. 129.

It is a rule of general application that damages for mental anguish are not recoverable in actions on contract. *Beaulieu v. Great Northern Railway Co.*, 103 Minn. 47. There are recognized exceptions to this rule as, actions for indignities by railway employees to passengers on railroad trains. *Brown v. C. M. & St. P. Ry. Co.*, 54 Wis. 342; actions for breach of promise to marry, *Thorn v. Knapp*, 42 N. Y. 474; and breach of contract to send and deliver a telegram, *Louisville & N. R. Co. v. Hull*, 113 Ky. 561. But there is conflict as to the doctrine in the last class of cases, the so-called "Texas doctrine" being repudiated by a majority of the State courts. 63 CENT. L. J. 340; *Francis v. Western Union Tel. Co.*, 58 Minn. 252; 1 AM. & ENG. ANN. CAS. 355, and cases cited. The rule announced in the principal case seems to be drawn by analogy from the doctrine in these telegraph cases. Injury to the feelings is said to be the gist of the damages for breach of the contract on which the action is brought. It is to be noted that most of the States that have passed upon the question involved in the principal case allow a recovery for mental suffering or not according to their position in the telegraph cases. 19 L. R. A. (N. S.) 564, Note; *Western Union Telegraph Co. v. Crowley*, 158 Ala. 583, 48 South. 381. That recovery for mental suffering can be had for breach of contract to carry a corpse is expressly denied in *Beaulieu v. Great Northern Railway Co.*, *supra*. It is there intimated, however, that if the action had been in tort the holding of the court would have been different, the court saying that recovery could be had only where the breach of contract amounted in substance to "an independent, wilful tort." A dissenting opinion in the Minnesota case is based on the theory that the complaint stated a cause of action in tort as well as in contract. That mental suffering is properly included as an element of damage in actions for a tort committed upon a corpse seems to be well settled. *Bessemer Land etc. Co. v. Jenkins*, 111 Ala. 135; *Meagher v. Driscoll*, 99 Mass. 281; 3 AM. ENG. ANN. CAS. 136, Note. Although the doctrine followed in the Texas case has made a considerable invasion on the common law rule of damages for breach of contract laid down in *Hadley v. Baxendale*, 9 Exch. 341, the courts repudiating it do so in no unmistakable terms. It is said in *Western Union Tel. Co. v. Ferguson*, 157 Ind. 64, "So in cases like that at bar the remedy should come from legislation, and not by judicial decision out of harmony with established principles of law."